

1 A No. No, it was -- No.

2 Q Did you show or discuss with Mr. Buchanan the
3 Commission's 1990 report and order that we've been talking
4 about periodically that appears as Official Notice Exhibit
5 4?

6 A The 1990 order which is the one that contains the
7 footnote 59?

8 Q The famous footnote, yes.

9 A I don't recall.

10 Q Did Peninsula and Coastal modify the financing
11 provisions of the asset purchase agreement in any way while
12 the assignment applications were pending?

13 A Yes.

14 Q I direct your attention to a three-page letter
15 that appears following Official Notice Tab Number 9, so it's
16 in the Official Notice binder.

17 A Yes, I'm with you.

18 Q Did you receive this letter on or about June 17,
19 1997?

20 A Later than that. For delivery to Alaska, it's
21 typically a week later, so sometime after that date.

22 Q And what did you understand this letter to do?

23 A The Commission found a problem with our financing
24 agreement. We had offered to carry a note on the assets of
25 the translators at a six percent interest rate over a 20-

1 year period and I think at the time the Commission was
2 balking at the six percent rate. That was one of their
3 problems, which today would be a great rate.

4 And there was some other concern that we weren't,
5 that somehow we would still be connected with these
6 translators and **not** completely independent of these
7 translators, so basically I think in response, we found that
8 we couldn't go ahead unless Coastal came up with their own
9 financing which was what they then attempted to do.

10 Q Okay. Let me back up a second. As a result of
11 this letter, the June 17, 1997 letter, Peninsula and Coastal
12 redid their agreement?

13 A I believe we filed an amendment to the agreement,
14 but I don't see it here.

15 JUDGE SIPPEL: Did you fill out an official notice
16 overnight?

17 BY MR. SHOOK:

18 Q Well that's the Commission letter. **Now** I direct
19 your attention to Enforcement Bureau Exhibit tab **12**. It's a
20 10-page document. Could you please tell us what it is.

21 A It's essentially a 345 form, FCC 345 form which
22 was contained as an exhibit number 1, the asset purchase
23 agreement as modified by the **asset purchase** agreement
24 amendment.

25 Q Do you recognize the signatures that appear on

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1 pages 9 and 10?

2 A Yes.

3 Q Whose are they?

4 A Page 9 is David Buchanan; page 10 is my signature.

5 Q Also the signature that appears on page 6?

6 A Yes, mine.

7 Q At the time of the asset purchase agreement, did
8 you believe that the waivers Peninsula received for the
9 Seward stations could never be altered in any way?

10 A The waivers that were granted to the Seward
11 stations amounted to the conditions or if you want to call
12 it conditions, but those were attached to our licenses, and
13 in order to modify our license, it would have to go through
14 a 316 procedure to modify our licenses which entails a
15 notice, show cause order and opportunity to protest and
16 obviously anything can be changed providing you run through
17 the correct procedure to change it.

18 Q So yes with the qualifications that you have
19 specified.

20 A A license can -- There **is** provision for modifying
21 a license, so yes, it could be modified at some point in the
22 future if the correct procedure was followed which in our
23 case, it wasn't.

24 Q Although it is now.

25 A The February 2000 order failed to follow the 316

1 procedure for modifying our Seward licenses. The Commission
2 attempted to correct that in the May 2001 order where they
3 issued a show cause order for Seward pursuant to 316.

4 Q Did you ever tell David Buchanan that the waivers
5 given to the Seward stations could never be altered in any
6 way?

7 A I don't think I would make that kind of statement.
8 No.

9 Q Did you ever bring Section 316 of the Act to Mr.
10 Buchanan's attention with respect to the Seward translators?

11 A I would say yes but only in a more recent context
12 as far as our current proceedings and pointing out to Mr
13 Buchanan how the Commission failed to follow the 316
14 procedure and the February 2000 order and that that was a
15 basis of one of our points on appeal with the D.C. Circuit
16 Court.

17 He would become aware of it within the last two
18 years as opposed to back in '96.

19 Q I now direct your attention to the documents
20 following Enforcement Bureau Exhibits, in this case tab
21 number 9. The particular application that I would like you
22 to focus on begins on page 8 of that tab exhibit and ends at
23 page 32.

24 A Okay. I'm with you.

25 Q What understanding do you have as to what this

1 document is?

2 A This was a document essentially to restore service
3 to Kodiak by requesting a signal delivery waiver to feed
4 these two translator stations via satellite.

5 Q Now what role, if any, did you have in preparing
6 the information that appears in this application?

7 A My role would have been just a technical, from a
8 technical standpoint to assist Mr. Buchanan with the
9 technical aspects of converting this feed to a satellite
10 delivery signal.

11 Q There are a number of exhibits that are related to
12 this particular application. I believe they go one through
13 nine and in some instances there's a Part A and a Part B to
14 them. Did you have any role with respect to Exhibit Number
15 1 that appears on pages 16, 17 and 18?

16 A This was prepared when? This is '97?

17 Q Yes, sir. It says at the top, it reflects that it
18 was, something happened on May 23, 1997.

19 A Right, yes. The letter contains a discussion
20 about the antennas on Pillar Mountain being destroyed and
21 the signal fading problem and it's my recollection that I
22 assisted Mr. Buchanan with the technical aspects of why it
23 was necessary to get a waiver from the standpoint that the
24 signal was basically unacceptable for broadcast use and the
25 applicant, it appears that Mr. Buchanan put the whole thing

1 together, and my guess is, this is five years ago now, that
2 I assisted him with it in part.

3 I do believe I sent him the copy of the Kodiak
4 newspaper clipping and I furnished him with a copy of the
5 letter we had from the Department of the Air Force, since it
6 was written to us, and I gave him a copy of the City of
7 Kodiak, indicating that they were going to demolish the
8 antennas, so I provided him with some of the exhibits as
9 well as some of the technical aspects that he was not sure
10 about when he was preparing the whole exhibit. That's my
11 recollection.

12 Q All right. You're saying you did not draft
13 Exhibit Number 1?

14 JUDGE SIPPEL: This is Exhibit Number 1 to your
15 Exhibit Number 9.

16 MR. SHOOK: I know. It's going to be a little
17 bit --

18 JUDGE SIPPEL: The record's going to be a little
19 bit fuzzy, but go ahead.

20 THE WITNESS: It's been five years. I don't
21 recall. I remember helping him with putting together the
22 request for the waivers. To the extent of typing the whole
23 thing up, I don't remember. I could **possibly** have typed it
24 for him, but I don't -- I mean it's five years. I don't
25 know.

1 BY MR. SHOOK:

2 Q Now you indicated that you did supply the material
3 that appears on pages 19, 20, 21, 22, correct?

4 A Yes. Yeah, that was the point. They were going
5 to tear these things down. I had the documents. We needed
6 to justify the waiver request, so I furnished him with proof
7 that these antennas were coming down.

8 Q Wouldn't it be also fair to state that you
9 supplied the material that appears on pages 23, 24, 25, 26,
10 27, 28, 29, 30, 31 and 32?

11 A Those are documents of applications. Page 23 is a
12 copy of the license for the translator license to Seldovia
13 [phonetic] which I had in my possession and it showed that
14 the Commission granted us, it was, well this was essentially
15 a Rangel Radio Group grant here for this Seldovia translator
16 in which we were attempting to fix a fading problem that we
17 had with our reception in Kodiak and the Commission granted
18 me another translator to be co-located with our primary
19 station in order to do a diversity receive arrangement which
20 I described in Exhibit A2, attempting to improve the signal
21 reception in Kodiak.

22 I prepared all of this. This was prepared back in
23 1991, so this **is** all **of my** preparations that are **included**
24 here.

25 Q I think you may have lost the question that I had

1 asked which was did you supply this material --

2 A Yes.

3 Q Usually the simplest answer is the best answer.

4 JUDGE SIPPEL: Are you beginning to move into
5 another area, Mr. Shook, you may want to think about giving
6 the witness a little break. It's about ten after three.

7 MR. SHOOK: This is an area, this particular
8 application I'm almost finished with, and then we can break.

9 BY MR. SHOOK:

10 Q Moving back to page 16 of tab Exhibit 9, there's a
11 reference in the fourth paragraph that appears on that page
12 to K285AA being barely on the air. Do you see that?

13 A Yes.

14 Q And being barely on the air, that was what
15 happened after the Air Force took the antennas down?

16 A That's correct.

17 Q Did there come a time when the station went off
18 the air?

19 A Yes.

20 Q Roughly when?

21 A October or November of that same year, **of** '97.

22 Q Had there been any service interruptions between
23 *May* of 1997 and November **of** 1997?

24 A Well it depends how you define service
25 interruption. When the signal faded --

1 Q Did you attempt to address that signal fading
2 problem by a different delivery method of KWW-FM to the
3 Kodiak translator, K285AA?

4 A Yes.

5 Q What was that?

6 A We filed I think, I don't recall the date but we
7 filed for a satellite earth station uplink and built a C-
8 band uplink to be able to use a satellite feed to feed not
9 only these two translators in Kodiak was the plan but also
10 to feed Seward at the same time.

11 Q So that involved an application that was filed at
12 the Commission?

13 A Yes, for the uplink facility.

14 Q Was that application granted?

15 A Yes.

16 Q Roughly when?

17 A I don't have-- It would have been in this time
18 frame, I believe in '97, summer of '97 approximately.

19 Q In terms of delivery and programming to the Kodiak
20 translators, was it your understanding that Peninsula needed
21 to have its license modified in order to have the signal
22 delivered via translator?

23 A Yes.

24 Q Was the signal in fact delivered via translator
25 for any period of time?

1 A Was the signal delivered --

2 Q KWW-FM, was it delivered to the Kodiak
3 translator, K285AA?

4 A Via satellite?

5 Q Yes, sir.

6 A Yes.

7 Q For what period of time?

8 A I would say perhaps weeks.

9 Q And that took place some time in the summer or
10 autumn of 1997?

11 A Autumn of '97.

12 Q That was before the station went silent?

13 A Yes. Yes. There had been, Coastal I believe
14 applied for waivers to institute a satellite feed in Kodiak
15 is my recollection.

16 Q Isn't that the application that we're looking at?

17 A Yes. Right. Right.

18 Q Was that application granted?

19 A This application I believe was denied in the
20 December '98 memorandum opinion and order, was my
21 recollection.

22 Q Which we haven't gotten to yet, but we will. When
23 the Kodiak 285AA translator went off the air, did Peninsula
24 lose advertising revenues as a result?

25 A Yes.

MR. SHOOK: Your Honor, I've completed my line of
2 questioning on that particular application up to that order
3 which I will get to a little later, so we could take a break
4 now.

5 JUDGE SIPPEL: All right. It's quarter past
6 three? I've got a little glare there, is that what it says?

7 MR. SHOOK: Yes.

8 JUDGE SIPPEL: Ten past?

9 THE REPORTER: No, it's not. It's 3:15.

10 JUDGE SIPPEL: All right. So I'll determine it to
11 be 3:15. We'll take a 15-minute break. Let's go off the
12 record.

13 (Whereupon, a brief recess was taken.)

14 JUDGE SIPPEL: On the record.

15 BY MR. SHOOK:

16 Q Mr. Becker, with respect to the three-page letter
17 that appears following Official Notice tab number 9, that
18 was the one that dismissed the assignment applications that
19 were originally filed to assign the licenses for the nine
20 translators. Did Peninsula seek Commission review of this
21 staff action?

22 A Which? I'm sorry, I'm not with you. Which page
23 are we on?

24 Q Okay, Office Notice tab number 9

25 A I'm on the exhibits part.

1 Q That's okay. We end up bouncing back and forth,
2 so it can be hard to follow.

3 A All right. Okay, I have it. This is the
4 rejection of our proposed financing agreement?

5 Q Well that's one way of looking at it, yes.

6 A Okay.

7 Q And the question is whether Peninsula sought
8 Commission review of this staff action.

9 A My recollection is no. Well, no.

10 Q I'd like to now direct your attention to the tab
11 number 4 of the Enforcement Bureau exhibits. That's the
12 binder that you had in front of you. Now you have it again.

13 JUDGE SIPPEL: It was number one?

14 MR. SHOOK: Tab 4.

15 BY MR. SHOOK:

16 Q The particular filing that I want you to focus on
17 begins at page 8 and ends at page 35.

18 A Okay.

19 Q Could you tell us what this document represents.

20 A It's a filing by Coastal who was our proposed
21 assignee to seek a waiver request for satellite feed of
22 these translators in Kodiak.

23 Q NOW we have looked at the application for K285AA.
24 I take it this is the application for the other translator,
25 K274AB?

1 A Yes.

2 Q In terms of the preparation of this application,
3 would your role have been identical to that which you
4 described for the K285AA application?

5 A Yes.

6 Q I direct your attention to page 17.

7 A Okay.

8 Q The fourth paragraph, first sentence.

9 A Yes.

10 Q So we're now in May of 1997 and according to this
11 document, K274AB is off the air.

12 A Yes.

13 Q **At** some point between this date, May 23, 1997 and
14 the following October of 1998, did K274AB ever go back on
15 the air?

16 A Yes.

17 Q How did it go back on the air?

18 A To test the satellite feed that we were
19 anticipating would be approved, we put it back on the air to
20 test, verify that everything was working for a period of
21 time.

22 Q In terms of the satellite feed, that occurred for
23 approximately a week **to** two weeks?

24 A It **would** be a matter of weeks, not months.

25 Q Did Peninsula have permission to use the satellite

1 feed for K274AB at that time?

2 A No.

3 Q I next direct your attention to Official Notice
4 documents tab number 10. It is a five-page letter signed by
5 Linda Blair and addressed to Mr. Southrnayd, Coastal and Mr.
6 Tillitson [phonetic]. Do you have that letter in front of
7 you?

8 A I'm sorry. I'm having trouble finding the date of
9 this letter. Oh, here it is.

10 Q It's November 6, 1997?

11 A Yes. Okay, I'm with you.

12 JUDGE SIPPEL: What page?

13 MR. SHOOK: Well **my** first question was just did he
14 have it in front of him, the answer to that is yes.

15 THE WITNESS: Yes.

16 BY MR. SHOOK:

17 Q Did you receive this letter on or about the
18 stamped date of issuance, November 6, 1997?

19 A After the stamp date, yes.

20 Q Did **you** read this letter?

21 A Yes.

22 Q Did you seek Commission review **of** this letter?

23 (Pause)

24 A Yes.

25 Q In what way?

1 A This letter is part of our D.C. Circuit Court of
2 Appeal case which was filed August 27.

3 Q My question is a little more narrow than that, and
4 that is that at the time that this letter was issued, did
5 you, did Peninsula seek Commission review of this letter?

6 A I don't recall.

7 Q I would direct your attention to the document that
8 follows tab number 13 in the Enforcement Bureau exhibits.
9 Sir, the binder that you're looking at right now I believe
10 is the Office Notice exhibits. I recognize this is a little
11 confusing, but this is what we have.

12 A Okay. Thirteen?

13 Q Yes, sir.

14 A Yes. Okay.

15 Q Did you see this document before it was filed at
16 the Commission?

17 A The filing date was January 7th of '98.

18 Q It's a little hard to read, but if you go to the
19 first page of the exhibit, the filing date appears to be
20 December 30, 1997. The stamp is not very clear. It's in
21 the upper right-hand portion of the first page.

22 MR. SOUTHMAYD: We'll stipulate to that.

23 THE WITNESS: Yeah, yes, I guess.

24 JUDGE SIPPEL: It's clear under Mr. Southmayd's
25 signature, page 9, December 30, 1997.

1 THE WITNESS: Yes.

2 BY MR. SHOOK:

3 Q So my question, just in case there was some
4 problem with what you were saying yes to, was had you seen
5 this document prior to its filing at the Commission.

6 A I believe so.

7 Q I direct your attention to page 8, the very last
8 paragraph.

9 A Yes.

10 Q At the time that this paragraph was written, did
11 you believe that to be true?

12 A Yes, we believed that PCI should be allowed to
13 consummate the sale to Coastal, yes.

14 Q The part that I'm focusing on is the, is as much
15 the first sentence as it is the rest of the paragraph.

16 A At the time, yes.

17 Q That was with the understanding that the grant of
18 the 1995 renewal applications and the grant of the
19 assignment applications was conditioned, among other things,
20 on the, on a grant of the 1997 renewal applications which
21 had just been filed.

22 A We did not, I believe my recollection is we
23 objected to conditioning the '97 renewal applications, the
24 consummation of the sale conditioned upon the '97 renewal
25 applications. I don't believe we ever accepted that

1 condition.

2 Q And where did, when did you first make known that
3 you did not accept that condition

4 A Let's see, this is '97. It's my recollection we
5 filed a petition for reconsiderat on, but I don't recall the
6 date.

7 Q If you would turn to tab 14 of the Enforcement
8 Bureau Exhibits, perhaps that would assist your
9 recollection.

10 A Okay. I'm there.

11 Q Looking at that document that follows tab 14 of
12 the Enforcement Bureau Exhibits, does that help you recall
13 when --

14 A Yes. Yeah, that's when I was thinking of.

15 Q So you're referring to a document that was filed
16 in January of 1999.

17 A Yes.

18 Q Which was sreking reconsideration of what?

19 A Well, the summary says requesting the Commission
20 reconsider action taken in the Memorandum Opinion and Order
21 98-314 released December 10, '98 in the above-captioned
22 proceeding.

23 It says I request the Commission reconsider this
24 action denying the applications of **both** files proposing
25 alternate signal delivery and request the condition, the

1 Commission unconditionally grant the license renewal
2 application for Seward without the condition of possible
3 termination of the licenses for those translators under the
4 current license term and PCI ultimately requests that the
5 Commission reconsider requirement that PCI divest itself of
6 those FM translators which utilize alternative signal
7 delivery sources and which operate beyond the 60 dB contour
8 of the PCI co-owned primary stations. That would be the
9 summary of it.

10 Q The document that you're seeking reconsideration
11 of is the Commission order that follows Official Notice
12 Exhibit tab 11? The other binder.

13 A Which one?

14 Q The other, that binder.

15 A I'm sorry. You lost me.

16 Q The Commission decision that you were seeking
17 reconsideration of, I'm just confirming that it is the
18 Commission decision that follows Official Notice Exhibit tab
19 11.

20 A Okay. Yes, 98-314.

21 Q You received a copy of that Commission order on **or**
22 shortly after the date of its release?

23 A The December of '98 order?

24 Q Yes, sir.

25 A Yes.

1 Q Do you know whether or not Coastal sought
2 reconsideration?

3 A No.

4 Q Maybe I should rephrase that. To the best of your
5 knowledge, did Coastal seek reconsideration?

6 A No.

7 Q One of the things that Peninsula sought
8 reconsideration of was the denial of the waiver request that
9 Coastal had made?

10 A Coastal was the proposed assignee and I'm not sure
11 how this works, but from my understanding, it was since they
12 were going to become the licensee, Coastal put in the
13 request and I guess, I'm sorry, I lost your question.

14 Q Peninsula was seeking reconsideration of a denial
15 of an application that it had filed by Coastal, correct?

16 A Yes.

17 Q But Coastal did not seek reconsideration.

18 A I don't believe they did. We were still the
19 licensee at this point, **so** we filed the petition for
20 reconsideration.

21 Q Now I direct your attention to pages 8 and 9 of
22 that decision, FCC 98-314, and in particular, I want you to
23 focus on paragraph 18. You can just read that *to yourself*.

24 A Page 8?

25 Q Pages 8 and 9.

1 A Yes.

2 Q Paragraph 18.

3 (Pause)

4 A Okay, I'm with you.

5 Q Did you attempt to consummate, did Peninsula
6 attempt to consummate the sale with Coastal following the
7 release of this memorandum opinion and order?

8 A No, because -- No.

9 Q What, if anything, prevented consummation?

10 A Well there were several problems. The waiver
11 request so that we could restore service to Seward or to
12 Kodiak was denied rendering seven of the translators or
13 rendering two of the translators essentially worthless, and
14 the other problem was that the Commission signaled in this
15 order that should a station come on in Seward at a later
16 date that the Commission would possibly withdraw our Seward
17 waivers once a full service commercial **FM** station came on
18 the air in Seward, and so that immediately flagged us that
19 there were four translators now that were in jeopardy
20 instead of the nine that we had agreed **to** sell them,
21 Coastal.

22 Q With respect **to** Seward, are you referring to what
23 the Commission stated *in* paragraph 14, which begins on page
24 7 and carries over to page 8?

25 A What was the paragraph number?

1 Q Fourteen.

2 A Yes. That is correct.

3 Q Did you understand from reading paragraph 14 that
4 the Commission was stating that the staff had made an error
5 in issuing the Seward waivers in the first place?

6 A Where do you see that? I don't see that.

7 Q Well just look at paragraph 14.

8 (Pause)

9 A I don't see any statement about the staff making
10 an error.

11 Q Well what does the second sentence of paragraph 14
12 mean to you?

13 A The second sentence says, "As indicated above,
14 initial grant of a waiver would not be justified here absent
15 a showing that the Seward translators provide white area
16 service and we --" Oh, there it is. "We disagree with the
17 staff's application of Rangel in the 2/18/92 letter."

18 Q Isn't that the Commission saying the staff made a
19 mistake?

20 A Well the Commission is saying that, however, our
21 interpretation is that the staff was delegated authority to
22 grant these licenses which they did, so it's not my problem.
23 I mean, it's the FCC and whatever internal problems they
24 have is not my concern.

25 Q In this case, though, this is the Commission

1 acting on your 1997 renewal applications, is it not?

2 A Yeah, I guess. Yes. Yes.

3 Q I direct your attention next to the Commission
4 memorandum opinion and order that follows tab number 12.

5 MR. SOUTHMAYD: Excuse me. Is this Official
6 Notice 12?

7 MR. SHOOK: Yes, sir

8 THE WITNESS: Okay.

9 BY MR. SHOOK:

10 Q Do you have it?

11 A Yes.

12 Q Following release of this memorandum, opinion and
13 order, did Peninsula attempt to consummate the sale of the
14 translators with Coastal?

15 A No.

16 Q What prevented consummation?

17 A The same problem, four translators out of seven
18 were rendered worthless.

19 Q You mean four out of nine?

20 A Four out of nine, yes.

21 Q And you're referring to the Kodiak and the Seward
22 translators?

23 A Yes. The Commission's interference in the sale
24 prevented us from completing it. I should say interference
25 with the conditions of the sale prevented us from completed

1 the assignment.

2 Q I want to step back in time just a tiny bit. If
3 you could go to the other binder, the big binder, the
4 document, the documents following tab 15.

5 A Okay.

6 Q There are two letters there, the first of which,
7 is that your signature?

8 A It is.

9 Q Were you calling off the sale to Coastal at this
10 point?

11 A No.

12 Q What were you doing?

13 A I was telling Mr. Buchanan that we had no
14 obligation to wait any longer for the FCC to fix the
15 problems that they created for **us** to consummate the sale. I
16 was releasing him from any obligation to continue to wait.
17 That's what it says in paragraph 2. I felt bad the guy
18 waited three years to buy these things.

19 Q You had received the letter that appears on page 2
20 of tab 15 on or about November 8, 1998?

21 A Yes.

22 Q Did you have any follow-up discussion with Mr.
23 Buchanan about whether or not the deal would go forward?

24 A We had filed a, I think it was called motion for
25 expedited action or something we were attempting to get the

1 Commission to act and we were very concerned that Mr.
2 Buchanan would pull out at this point based on this letter.
3 I think this letter was November, December I think we filed
4 something, I don't recall what it was, asking the Commission
5 to do something because we were in danger of losing our
6 buyer.

7 Q Now I'd like you to focus on timing of some
8 matters. The letter that you just looked at that Mr.
9 Buchanan sent to you is dated November 8, 1998 and you
10 indicated that you received it on or shortly after the date
11 that appears there.

12 A Right.

13 Q The Commission decision that follows Official
14 Notice tab 11 was released December 10, 1998, roughly a
15 month after Mr. Buchanan sent his letter to you.

16 A Yes.

17 Q Now in Mr. Buchanan's November 8, 1998 letter, in
18 the second paragraph, he indicates that if Coastal is unable
19 to close by December 31, 1998, it will be forced to
20 terminate the transaction with Peninsula.

21 A That's correct.

22 Q Did it in fact do so?

23 A No.

24 Q Was there a follow-up letter that reflected that
25 the deal was still on?

1 A I don't know. I'm trying to remember. I don't
2 know. Essentially the deal stayed together until the
3 February 2000 order came out and at that point, it was over,
4 and we managed to hang on to Buchanan through the February
5 2000 order, but I don't recall any correspondence. We were
6 going on a month-to-month or week-to-week basis expecting
7 something to happen out of the Commission, until we
8 eventually got to the 2000 order.

9 Q Now if I understood your testimony, Peninsula was
10 very unhappy with the December 10, 1998 Commission order.

11 A Yes.

12 Q And perhaps I misheard, but I thought I understood
13 you to say that that order was a deal breaker

14 A Yes. That order and the subsequent order were
15 both deal breakers. The one that clinched it was the one
16 that followed the December which was the 2000 February,
17 February 2000 order. That one crushed it completely.

18 JUDGE SIPPEL: Is that Office Notice tab 12?

19 MR. SHOOK: Tab 12 is the February 2000 order,
20 yes.

21 JUDGE SIPPEL: That's just what --

22 MR. SHOOK: That's what he just referred to.
23 Right.

24 BY MR. SHOOK:

25 Q I now direct **your** attention to the Commission

1 document that follows Official Notice tab 13.

2 A Is that the May 2001 order?

3 Q Yes, sir.

4 A Yes, okay.

5 Q Did there come a time when you became aware of
6 this document?

7 A Yes.

8 Q How did you become aware of it?

9 A I became aware that there was a problem because my
10 competitors ran a news story on their station that we were
11 going off the air because we had lost our translators. I
12 called Mr. Southmayd and then he, I believe -- No. Back
13 that up. He sent me an email stating that there was an
14 order and then I think he either faxed me or emailed me the
15 content of the order the following week and then I was never
16 officially served with the order, it never made it. I never
17 did get an actual certified copy of this order.

18 I became aware of it through I think the email or
19 the fax.

20 Q If I were to find a green card that reflected
21 otherwise, would that change your testimony?

22 A Yes. Yeah, I think we were served about three
23 weeks later, yeah, I would correct that. I apologize. I
24 get these things mixed up. Yeah, I think it did eventually
25 come through. I was thinking of the forfeiture order that I

1 never did get a copy of. That's the one that was never
2 served.

3 Q Now considering that the document shows a release
4 date of May 18, could you state approximately when you
5 became aware of the document?

6 A My recollection is it was the following week, but
7 I can't tell you exactly

8 Q At that time, did you become aware that the
9 Commission had rescinded the conditional grants of renewal
10 and assignment applications for seven of Peninsula's FM
11 translators, specifically K285EF, Kenai, 283AB, Kenai
12 Soldotna, K257DV, Anchor Point, K265CK, Kachemak City,
13 K272CN, Homer, K274AB, Kodiak and K285AA, Kodiak?

14 A Yes.

15 Q At that time, did you also become aware that the
16 Commission had canceled the call signs of the stations?

17 A Yes.

18 Q At that time, did you also become aware that the
19 Commission had ordered Peninsula to terminate the operation
20 of the seventh translator stations?

21 A Yes.

22 Q Did Peninsula terminate the operations of the
23 seven translator stations after you became aware of the
24 order to do so?

25 A No.

1 Q Who made the decision not to terminate the seven
2 translator stations' operations?

3 A I did.

4 Q Was the decision not to terminate the stations'
5 operations yours alone?

6 A My wife was in agreement, but jointly, we were in
7 agreement to keep the translators on the air because we
8 intended to file an appeal

9 Q Now I have been phrasing my questions in terms of
10 becoming aware of the order and what I'm going to focus on
11 now is slightly different but it may cover virtually all of
12 the same ground. That is, did there come a time when you
13 personally received a copy of the document, by whatever
14 means?

15 A Yeah, I believe so. I think I did get a certified
16 mail. I had them mixed up, but yeah, I think I did get a
17 certified mail with a green card of this order.

18 Q Right. My question --

19 JUDGE SIPPEL: What was the order again for the
20 record? What was --

21 MR. SHOOK: Official Notice Exhibit 13.

22 JUDGE SIPPEL: Okay.

23 BY MR. SHOOK:

24 Q My question, you know, that may be, that may be
25 the correct answer to my question, but my question is did

1 you receive a copy of the order and read it before you
2 actually got the copy that the Commission sent? In other
3 words, did you get a copy from a different source? It
4 doesn't have to be from the Commission.

5 A Yes, I believe I did. I think I already said
6 that. I think I got one from Jeff.

7 Q Okay, and I wasn't sure whether you got a copy of
8 the order because I phrased my questions in terms of
9 becoming aware, which could mean that you were told about
10 the order, it was paraphrased to you in some way, but am I
11 to understand that you actually had a copy of the order in
12 hand from your counsel?

13 A I believe that's correct, yes.

14 Q Would it be fair to say that you understood by
15 continuing to operate the translators that Peninsula was
16 deliberately disobeying the Commission's directive to
17 Peninsula?

18 A I agonized over that decision. I did not want to
19 disobey the Commission, however, I was caught **by** the fact
20 that the Commission had not extended to me the same
21 accommodation that they had extended every other licensee
22 renewal applicant since the regulatory history of the
23 Commission **in** 1934 to continue to operate pending judicial
24 review and the problem I had was if I turned off the
25 translators for more than 12 months of consecutive being off

1 the air, that I would forfeit my licenses forever and moot
2 to my appeal that I had planned with the D.C. Circuit.

3 Q The answer to my question, though, is that you
4 understood that what you were doing was deliberately
5 disobeying --

6 A Yes, and I was --

7 A -- the Commission's order?

8 A Yes, and I was greatly troubled by that because I
9 am an ethical person. I obey the law. I was caught. The
10 Commission put me in the situation to force me to disobey
11 that in order to protect the continuity of my licenses which
12 are the basis of my appeal, and I agonized over that
13 decision because I knew it had consequences, but the long-
14 term aspect was that I did not want my appeal to dissipate
15 because my licenses would be gone after 12 months.

16 Q Now just from a timing standpoint, I understand
17 from your testimony that you received a copy of the
18 Commission's order roughly a week after its release.
19 Correct?

20 A Um-hmm.

21 Q If I understand matters, the timing of matters
22 correctly, your appeal with the D.C. Circuit didn't come
23 until the middle of June.

24 A We had 30 days to appeal the order. We timely
25 filed our appeal within the 30-day time period.